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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRETT MARTINSON,

Plaintiff,

vs.

CENTRAL PIERCE FIRE & RESCUE,

Defendant.

No. 3:21-cv-05036-BHS

**DEFENDANT'S ANSWER
AND AFFIRMATIVE
DEFENSES TO COMPLAINT**

Defendant Central Pierce Fire & Rescue (hereinafter referred to as "CPFR") hereby answers the Plaintiff's Complaint and asserts its affirmative defenses thereto.

ANSWER TO PLAINTIFF'S COMPLAINT

I. Introduction

1. This paragraph does not contain an allegation and, therefore, does

1 not require an answer.

- 2
- 3 2. This paragraph does not contain an allegation and, therefore, does
- 4 not require an answer.
- 5

6 **II. PARTIES AND JURISDICTION**

7

- 8 3. CPFR admits that Mr. Martinson was an employee of CPFR since
- 9 1998. Defendants lacks knowledge or information sufficient to form
- 10 a belief about the truth of the remaining allegations contained in
- 11 Paragraph 3 and therefore denies the same.
- 12
- 13
- 14

- 15 4. Admit.
- 16

- 17 5. Admit.
- 18

- 19 6. Admit that all acts alleged occurred in the Western District of
- 20 Washington; however, deny any wrongful acts occurred as alleged.
- 21

- 22 7. Admit that the United States District Court for the Western District
- 23 of Washington has jurisdiction over this matter as alleged; deny any
- 24 wrongful acts occurred in violation of the referenced statutes to
- 25 trigger jurisdiction.
- 26
- 27
- 28

- 29 8. Admit that the United States District Court for the Western District
- 30 of Washington is the proper venue based on the alleged facts; deny
- 31
- 32

1 any wrongful acts occurred in violation of the referenced statutes to
2 trigger venue.
3

4
5 **III. FACTS**

6 9. Admit that Mr. Martinson was hired by CPFR as a
7 firefighter/paramedic on April 9, 1998.
8

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10 10. CPFR lacks knowledge or information sufficient to form a belief
11 about the truth of the allegations contained in Paragraph 10 and
12 therefore denies the same.
13

14
15 11. CPFR lacks knowledge or information sufficient to form a belief
16 about the truth of the allegations contained in Paragraph 11 and
17 therefore denies the same.
18

19
20 12. Admit that Mr. Martinson was deployed for military purposes as
21 follows:
22

- 23
- 24 • 2002; CPFR lack knowledge or information sufficient to form
25 a belief about the truth of Paragraph 12 relating to 2002 and
26 therefore denies the same.
27
 - 28 • 2003—180 days
29
 - 30 • 2004—366 days
31
32

- 2005—365 days
- 2006—85 days
- 2007—47 days.

13. CPFR records do not reach back 13-14 years; consequently, CPFR lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 13 and therefore denies the same; CPFR is prejudiced by Plaintiff's delay in bringing such allegation.

14. CPFR records do not reach back 13-14 years; consequently, CPFR lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 14 and therefore denies the same; CPFR is prejudiced by Plaintiff's delay in bringing such allegation.

15. CPFR records do not reach back 13-14 years; consequently, CPFR lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 15 and therefore denies the same; CPFR is prejudiced by Plaintiff's delay in bringing such allegation.

1 16. CPFR records do not reach back 13-14 years; consequently, CPFR
2 lacks knowledge or information sufficient to form a belief about the
3 truth of the allegations contained in Paragraph 16 and therefore
4 denies the same; CPFR is prejudiced by Plaintiff's delay in bringing
5 such allegation.
6

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10 17. Admit that Mr. Martinson was deployed in parts of 2013, but deny
11 his deployment during the exact dates alleged in paragraph 17 based
12 on military orders on record with CPFR. Admit CPFR made an
13 announcement on April 17, 2013 that the Lieutenant Promotional
14 Testing Process would run from approximately September 16, 2013
15 – October 23, 2013. Admit Mr. Martinson returned from leave on
16 August 16, 2013, and completed retraining. Admit Mr. Martinson
17 applied for the Lieutenant's test on September 9, 2013. Admit that
18 CPFR was drafting a policy as of September 3, 2013, to manage the
19 testing process for individuals on leave. Deny remaining allegations
20 in paragraph 17 and any inferences therefrom.
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28

29 18. Deny.

30 19. CPFR lacks knowledge or information sufficient to form a belief
31
32

1 about the truth of the allegations contained in Paragraph 19 and
2 therefore denies the same. CPFR maintains no control over the
3 Washington State Department of Retirement Systems (“DRS”).
4 There is no agency relationship between CPFR and DRS.
5
6

7
8 20. Deny that a meeting took place as alleged “immediately prior to
9 [Mr. Martinson’s] deployment.” Deny Mr. Martinson ever
10 requested to make-up testing being held during his deployment.
11 Deny remaining allegations in paragraph 20 and any inferences
12 therefrom.
13
14

15
16
17 21. Deny.
18

19 22. Admit that an eligibility list for the Shift EMS Lieutenant position
20 was effective from October 12, 2015 through June 30, 2017, and
21 consisted of 13 individuals; six individuals received a promotion.
22 The remainder of paragraph 22 is denied.
23
24

25
26 23. Admit that Mr. Martinson was deployed in parts of 2016, but deny
27 his deployment during the exact date alleged in the Complaint based
28 on military orders on record with CPFR.
29
30

31 24. Deny.
32

1 25. Deny.

2
3 26. Mr. Martinson's request as alleged, if it occurred, would have been
4 made to DRS. CPFR lacks knowledge or information sufficient to
5 form a belief about the truth of the allegations contained in
6 Paragraph 26 and therefore denies the same. CPFR maintains no
7 control over DRS. There is no agency relationship between CPFR
8 and DRS.
9

10 27. Admit that military orders evidence deployment from 06/01/2018-
11 01/16/2019.
12

13 28. Admit.
14

15 29. Admit that Mr. Martinson returned to duty on January 14, 2019.
16 Deny the remainder of paragraph 29.
17

18 30. Mr. Martinson's request as alleged, if it occurred, would have been
19 made to DRS. CPFR lacks knowledge or information sufficient to
20 form a belief about the truth of the allegations contained in
21 Paragraph 30 and therefore denies the same. CPFR maintains no
22 control over DRS. There is no agency relationship between CPFR
23 and DRS.
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1 31. CPFR has no military orders confirming this allegation and,
2
3 therefore, denies the same.

4
5 32. Deny.

6
7 33. Deny.

8
9 34. Deny.

10 35. Admit.

11
12 36. Admit.

13
14 37. Admit contingent upon the member having at least five service
15 credit years.

16
17 38. Deny. CPFR maintains no control over DRS. There is no agency
18 relationship between CPFR and DRS.

19
20 39. Admit to the retirement benefit formula as stated. CPFR denies the
21 remainder of paragraph 39.

22
23
24 40. Admit that CPFR firefighters are eligible for contribution to the
25 deferred compensation and VEBA plans in accordance with the
26 applicable collective bargaining agreement. Admit that Mr.
27
28 Martinson's payroll history reflects periods of time in which no
29
30 contribution was made to his deferred compensation or VEBA
31
32

1 accounts. Deny the remainder of paragraph 40 or any inferences
2
3 therefrom.

4
5 41. Paragraph 41 is legal argument for which no response by CPFR is
6 warranted. CPFR recognizes its obligation to comply with all
7 applicable laws.
8

9
10 42. Deny.

11
12 43. Paragraph 43 is legal argument for which no response by CPFR is
13 warranted. To the extent a response is necessary, CPFR denies the
14 allegations of paragraph 43.
15

16
17 44. Paragraph 44 is legal argument for which no response by CPFR is
18 warranted.
19

20
21 45. Admit that CPFR posts all necessary workplace posters, including
22 those relating to USERRA.
23

24 46. Deny.
25

26 27 V. CAUSES OF ACTION

28
29 **[The Complaint does not include a section IV, so skipped to maintain**
30 **consistency with the Complaint. Also, the Complaint starts this**
31 **section with No. 42. The Complaint's numbering is maintained for**
32 **consistency.]**

1 42. Deny.

2
3 **(NO. 1—VIOLATION OF 38 U.S.C. § 4311 (a)—DISCRIMINATION)**

4 43. 38 U.S.C, § 4311(a) speaks for itself. To extent paragraph 43
5 paraphrases or is inconsistent with the cited statute or applicable
6 law, it is denied.

7
8
9 44. Deny.

10 45. Paragraph 45 is legal argument for which no response by CPFR is
11 warranted. The factual allegations of paragraph 45 are denied.

12
13 **(NO. 2—VIOLATION OF 38 U.S.C. § 4312 & 4313)**

14
15 46. Deny.

16
17 47. Deny.

18
19 48. Deny.

20
21 **(NO. 3—VIOLATION OF 38 U.S.C. § 4302 & 4318)**

22 **[The Complaint starts this section with No. 48. The Complaint's**
23 **numbering is maintained for consistency.]**

24 48. Deny.

25
26 **(CLAIM FOR LIQUIDATED DAMAGES 38 U.S.C. § 4323)**

27 49. Paragraph 49 is legal argument for which no response by CPFR is
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1 warranted. The factual allegations of paragraph 49 are denied.

2
3 50. Paragraph 50 is legal argument for which no response by CPFR is
4 warranted. To the extent a response is necessary, the allegations of
5 paragraph 50 are denied.
6

7
8 51. Deny.

9
10 52. Deny.

11
12 **V. PRAYER FOR RELIEF**

13 **[The Complaint has two sections designated “V.”, which is repeated**
14 **herein to maintain consistency with the Complaint.]**

15 Having fully answered the allegations contained within the Complaint,
16 CPFR hereby denies that Plaintiff is entitled to any of the relief requested
17 therein.
18

19
20 **JURY TRIAL DEMAND**

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22 The statutes cited by Plaintiff in support of his various causes of action
23 under USERRA do not expressly provide for a jury trial. CPFR reserves the
24 right to move for a bench trial.
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CPFR's AFFIRMATIVE DEFENSES

Having fully answered Plaintiff's Complaint, CPFR hereby submits the following AFFIRMATIVE DEFENSES:

- (1) Plaintiff is estopped, by reason of his own conduct and actions, from asserting the alleged claims herein.
- (2) Plaintiff has waived the right, by reason of his own conduct and action, to assert the alleged claims herein.
- (3) Plaintiff's claims are barred by the doctrine of laches.
- (4) Plaintiff's claims are barred because any action taken by CPFR was for legitimate, non-discriminatory reasons.
- (5) Plaintiff's claims are barred because any action taken by CPFR was not motivated by Plaintiff's military service.
- (6) Plaintiff's claims are barred because any action taken by CPFR would have taken place in the absence of Plaintiff's membership or obligation for military service.
- (7) Plaintiff's claims are barred because any action taken by CPFR was reasonable under the circumstances of the particular event in controversy.
- (8) If Plaintiff sustained any damage or injury as alleged in the Complaint, the

1 same was not caused by any fault of CPFR but was proximately caused by
2
3 Plaintiff's own conduct.

4
5 (9) CPFR has not imposed a materially adverse employment action against
6
7 Plaintiff for any reason, including his actions to enforce any protection
8
9 guaranteed by USERRA.

10 (10) If Plaintiff sustained any damage or injury as alleged in the Complaint, the
11
12 same was not due to any act or omission by or on the part of CPFR, but
13
14 was due to the failure of Plaintiff to mitigate such damage or injury.

15 (11) Plaintiff was a less qualified applicant than others selected for promotion
16
17 based on objective testing without consideration of military service, except
18
19 to provide a scoring advantage to Plaintiff per state law.

20
21 (12) CPFR did not deny Plaintiff of a "benefit of employment" within the
22
23 meaning of USERRA.

24 (13) Any claims arising prior to October 10, 2004, are barred by the statute of
25
26 limitations.

27
28 (14) CPFR has no agency relationship with DRS.

29
30 (15) CPFR has no control over DRS.

31
32 CPFR hereby explicitly reserves the right to amend this Answer and add

1 additional Affirmative Defenses as discovery and investigation in this matter
2
3 continue.

4
5 **DEFENDANTS' PRAYER FOR RELIEF**

6 WHEREFORE, having fully answered the Complaint and filed its
7
8 Affirmative Defenses, Defendants pray for the following relief:
9

- 10 (1) An Order dismissing the Complaint with prejudice.
11
12 (2) An Order awarding CPFR its reasonable costs and attorney's fees as
13
14 allowed by law.

15 For such other and further relief as law and equity allow.
16

17 Dated March 22, 2021.

18 By: /s/ Ronald A. Van Wert
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2021, I electronically filed the following document:

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Thomas G. Jarrard

tjarrard@att.net

[Matthew Z. Crotty](mailto:matt@crottyandson.com)

matt@crottyandson.com

/s/ Ronald A. Van Wert

Ronald A. Van Wert, WSBA #32050